

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**CHASE JARVIS and CHASE JARVIS, INC., a
Washington Corporation,**

No. C03-1265Z

Plaintiffs,

PLAINTIFFS' BILL OF COSTS

V.

K2 INC., a Delaware Corporation and K-2 CORPORATION, an Indiana Corporation d/b/a K2 Sports,

Defendants.

BILL OF COSTS

Plaintiffs Chase Jarvis and Chase Jarvis, Inc. (collectively “Plaintiffs”) respectfully submit this Motion for Costs requesting that the Clerk enter the Bill of Costs, attached hereto, against Defendants K2 Inc. and K2 Corp. (collectively “Defendants”). Plaintiffs motion is brought pursuant to FED. R. CIV. P. 54(d), Rule 54(d) of the Local Civil Rules for the Western District of Washington and 17 U.S.C. § 505 which authorize the Court to award all costs to the prevailing party in a copyright action.

Fees of the Clerk \$150.00

06/06/2003

Filing Fee – Complaint

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999 THIRD AVENUE, SUITE 2675
SEATTLE, WASHINGTON 98104
(206) 624-1933

Fees for service of summons and complaint \$221.05

06/10/2003	K2 Inc.	\$170.00
07/15/2003	K-2 Corporation	\$51.05

**Fees of the Court Reporter for All or Any Part of the Transcript
Necessarily Obtained for Use in the Case** \$10,526.70

Daily Trial Transcripts		
02/23/2005	Excerpt Jarvis	\$74.25
02/23/2005	Excerpt Jarvis	\$37.80
02/24/2005	Excerpt Weisgrau and	
02/25/2005	Excerpt Feary	\$803.00
02/25/2005	Excerpt Weisgrau	<u>\$374.00</u>
Total for Daily Trial Transcripts		\$1,289.05

Daily trial transcripts were necessary in this case for counsel to review prior testimony to prepare for cross examination, or the defense thereof and to prepare future witnesses based on the progress of the case thus far.

The hearing transcript was necessary for counsel to review.

Deposition Transcripts

1. Transcript of Andy Luhn (180 pages) \$1,400.90

Mr. Luhn is the former K2 Marketing Manager. Mr. Luhn's testimony was taken about K2's employment of photographer Chase Jarvis under the 2001 Agreement; K2's execution of the Jarvis contracts; K2's failure to employ internal procedures to ensure proper execution of the Jarvis contracts; K2's return of the Jarvis images; K2's practice of delivery of the Jarvis images to third parties without obtaining an additional license from Plaintiffs Jarvis; K2's practices regarding the use, accounting, storage and return of the Jarvis images and of other photographers' images; Plaintiffs Jarvis's demands that K2 remove the Jarvis images from its

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1 websites after expiration of licenses, offers to re-license the Jarvis images and demand of a back-
 2 license from K2; K2's marketing budgets, allocation of resources and corporate expectations for
 3 the marketing department; and the use and removal of the Jarvis images on graphics wraps on
 4 Ford vehicles.

5 2. Transcript of **Daniel Sadowsky** (38 pages) \$379.65

6 Mr. Sadowsky is the publisher of Aspen Days and Nights Mr. Sadowsky testified about
 7 his obtaining the Jarvis image used by Gene Taylor's sporting goods from the K2 Dealer
 8 Website; about industry standards regarding use and return of images; about payment for the
 9 Gene Taylor's advertisement; and that he never obtained a license from Plaintiffs Jarvis for use
 10 of the Jarvis image in Gene Taylor's advertisement.

11 3. Transcript of **Robert Wagner** (112 pages) \$762.10

12 Mr. Wagner, Navigant International, is defendants' expert witness. Mr. Wagner testified
 13 about the economic value of photograph images, as well as providing assessment as to the
 14 economic interest attributable to the images and to evaluate the economic analysis, if any,
 15 submitted on behalf of Plaintiffs with respect to damages and value; and regarding the economic
 16 value of damages, if any, attributable to the conduct at issue, in the event liability is determined
 17 to exist.

18 4. Transcript of **Robert Weisgrau** (130 pages) \$642.50

19 Mr. Weisgrau is plaintiff's expert. He testified about photographic industry standards;
 20 the value of K2's use of the Jarvis images beyond the term of the license and in ways not
 21 contemplated by the licenses; the lost value to Plaintiffs Jarvis from K2's use of the Jarvis
 22 images without attributing photo credit; K2's obligation to return the original slides and the value
 23 of the lost slides; and the quality of the Jarvis work and his position in the photographic industry.

1 5. Transcript of **Chase Jarvis** (234 Pages) \$763.40

2 Mr. Jarvis is a Plaintiff in this case. He testified about his contracts with K2 and K2's use
 3 of the Jarvis images; his delivery of original slides to K2 and K2's return of the Jarvis images;
 4 his standard practices regarding delivery and return of original slides and the industry standards
 5 regarding the same; his pricing of the K2 contracts and the pricing in the photographic industry;
 6 his damages incurred as a result of K2's use of the images beyond the license terms and use of
 7 the Jarvis images without attributing photo credit and loss of the 835 original slides; his
 8 discussions with K2 personnel about K2's proper execution of the contracts and use of his
 9 images; and all statements made in his Declarations submitted to the Court and about all claims
 10 contained in his Second Amended Complaint.

12 6. Transcript of **Debbie Fuller** (150 pages) \$1,147.50

13 Ms. Fuller is a former K2 marketing manager. Ms. Fuller testified about K2's
 14 employment of photographer Chase Jarvis under the 2000 Agreement and the certain
 15 photographic shoots during which images were created for and subsequently delivered to K2 by
 16 Mr. Jarvis; execution of the Jarvis contracts and K2's failure to employ internal procedures to
 17 ensure proper execution of the Jarvis contracts and return of the Jarvis images; K2's practice of
 18 delivery of the Jarvis images to third parties without obtaining an additional license from
 19 Plaintiffs Jarvis; her receipt of the Jarvis images and failure to verify the number Mr. Jarvis
 20 claimed was delivered; K2's practices regarding the use, accounting, storage and return of the
 21 Jarvis images and of other photographers' images, and K2's policies for same or the absence of
 22 policies with respect thereto; K2's use of a copyrighted song by the popular artist Moby on its
 23 website without obtaining a license; a purported oral grant of the rights to the Gravity Tools
 24 images; about K2's marketing budgets, allocation of resources and corporate expectations for the
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1 marketing department; Mr. Jarvis's reputation and the quality of his work; and the use and
 2 removal of the Jarvis images on graphics wraps on Ford vehicles.

3 **7. Transcript of Timothy Petrick (181 pages) \$1,505.30**

4 Mr. Petrick is the VP Global Sales of K-2 Corporation. He testified about the corporate
 5 structure of K-2 Corporation, K2 Inc. and the foreign units of K2; K2's use of the Jarvis images
 6 and removal of the Jarvis images from the K2 websites; K2's failure to employ any internal
 7 procedures or systems to ensure proper execution of the Jarvis contracts or return of the Jarvis
 8 original slides; the sales of K2 products attributed to K2's use and misuse of the Jarvis images;
 9 the internal structure of K2; that he had little or nothing to do with the photographers and to his
 10 limited contact with Mr. Jarvis; Mr. Jarvis's reputation at K2 and the quality of his work; the use
 11 and removal of the Jarvis images on graphics wraps on Ford vehicles; the industry standard to
 12 return the original slides to the photographer; the structure of K2 Inc. and K-2 Corporation, Sitca
 13 Corporation and their relationships with subsidiaries including, without limitation, K2 Japan, K2
 14 Denmark, K2 Canada and K2 Europe; K2's use of the K2 and K2 Sports monikers; K2 Inc.'s and
 15 K-2 Corporation's adherence to K2 Inc.'s Principles of Corporate Governance and Code of
 16 Business Conduct and Ethics and K2 Inc.'s and K-2 Corporation's practices of following these
 17 standards.

18 **8. Transcript of Ali Wise Feary (183 pages) \$1,147.30**

19 Ms. Feary is the Internet Services Manager for K2 Sports. Ms. Feary testified about K2's
 20 websites, including, without limitation, their development, and management; and the process
 21 utilized to remove images and her discussions with foreign affiliates of K2 Corp. regarding the
 22 removal of images.

1 9. Transcript of **Brad Harrington** (22 pages) \$309.40

2 Mr. Harrington of Cole & Weber testified about K2's website and advertising campaign
3 and theater catalogue, and consumer brochure and K2 personnel with whom he dealt.

4 10. Transcript of **Jay Barrett Willet** (101 pages) \$1,027.80

5 Mr. Willet is a former K2 Promotions Manager. He testified about the negotiation of the
6 2001 Agreement with Mr. Jarvis; K2's employment of photographer Chase Jarvis under the 2001
7 Agreement and concerning his photographic shoots; the execution of the Jarvis contracts and
8 K2's failure to employ internal procedures to ensure proper execution of the Jarvis contracts and
9 return of the Jarvis images; K2's practice of delivery of the Jarvis images to third parties without
10 obtaining an additional license from Plaintiffs Jarvis; K2's practices regarding the use,
11 accounting, storage and return of the Jarvis images and of other photographers' images;
12 conversations with Mr. Jarvis wherein Mr. Jarvis reminded him of K2's contractual obligations
13 regarding use of the images and required photographic credit; Andy Luhn's use of images whose
14 licenses had long-since expired and disregard for contracts or photographer's copyrights; K2's
15 marketing budgets, allocation of resources and corporate expectations for the marketing
16 department; Mr. Jarvis's reputation at K2 and the quality of Mr. Jarvis's work; and about the use
17 and removal of the Jarvis images on graphics wraps on Ford vehicles.
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19 Total for Deposition Transcripts \$9,085.85

20 All of the deposition transcripts, except for the transcript of Daniel Sadowsky, were taken
21 by Buell Realtime Reporting. Buell Realtime Reporting charges \$3.95 per page for an original
22 and copy ordered of a transcript, and \$2.75 per page for a copy ordered of a transcript. A rough
23 draft copy is an additional \$1.25 per page.
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	Fees and Disbursements for Printing	\$13,175.44
2	In-house	\$6,715.65
3	Outside	\$6,459.79
4	Hendricks & Lewis charges \$.15 per page for in-house copies.	
5	Fees for Witnesses	\$1,985.97
6	Andy Luhn	
7	Service of deposition subpoena	\$69.25
8	Hearst Communications	
9	Service of deposition subpoena	\$34.05
10	VNU Business Publications	
11	Service of deposition subpoena	\$170.00
12	Hooked on the Outdoors, L.L.P.	
13	Service of deposition subpoena	\$190.00
14	The Washington Post Company	
15	Service of deposition subpoena	\$115.00
16	Daniel Sadowski	
17	Witness fee for deposition	\$50.00
18	Debbie Fuller	
19	Witness fee for deposition	\$211.15
20	Travel expenses for deposition	\$252.62
21	Andy Luhn	
22	Witness fee for trial	\$55.00
23	Service of trial subpoena	\$84.25
24	Brad Harrington	
25	Witness fee for trial	\$41.50
26	Service of trial subpoena	\$51.05
27	Jon Bryant	
28	Witness fee for trial	\$41.50
29	Service of trial subpoena	\$38.95
30	Chad Coleman	
31	Witness fee for trial	\$44.50
32	Service of trial subpoena	\$52.95

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1	Rod Elam	
2	Witness fee for trial	\$43.00
3	Service of trial subpoena	\$52.95
4	Barrett Willett	
5	Witness fee for trial	\$68.00
6	Service of trial subpoena	\$41.75
7	Lori Vandenbrink	
8	Witness fee for trial	\$128.50
9	Service of trial subpoena	\$150.00
10	Fees for exemplification and copies of papers necessarily obtained For use in the case	\$883.16
11	Specifically, Plaintiffs had a trial exhibit created showing web site visits.	
12	Docket Fees under 28 U.S.C. § 1923	\$0.00
13	Costs as shown on Mandate of Court of Appeals	\$0.00
14	Compensation of court-appointed experts	\$0.00
15	Compensation of interpreters and costs of special interpretation Services under 28 U.S.C. § 1828	\$0.00
16	Other costs (itemized below)	\$30,018.82
17	Delivery Costs	\$340.02
18	Expert	\$25,754.20
19	Expert Costs Reimbursed by Perkins Coie	(\$5,452.40)
20	Meals	\$1,240.53
21	Mediation	\$1,800.00
22	Overnight/Express Mail	\$217.40
23	Searches/Document Retrieval	\$240.05
24	Supplies—Trial Exhibit Binders	\$303.99
25	Telephone	\$164.04
26	Travel/Parking	\$1,224.31
27	Westlaw	\$4,186.68
28	TOTAL	\$56,961.14

Attached hereto is documentation for requested costs in all categories.

1 **DECLARATION OF KATHERINE HENDRICKS**

2 I, Katherine Hendricks, state:

3 1. The facts set forth herein are within my personal knowledge and, if sworn as a
4 witness, I could and would testify competently thereto under oath.

5 2. I am an attorney in the law firm of Hendricks & Lewis, counsel for the Plaintiffs
6 herein, Chase Jarvis and Chase Jarvis, Inc. (collectively "Plaintiffs"). I, along with O. Yale
7 Lewis, Jr. and Alexa L. Shelly also of Hendricks & Lewis, represented Plaintiffs throughout the
8 prosecution of this action.

9 3. The costs and disbursements included in this Bill of Costs are correctly stated.

10 4. The costs and disbursements included in this Bill of Costs were actually and
11 necessarily incurred in Plaintiffs' prosecution of this action.

12 I declare under penalty of perjury of the laws of the United States that the foregoing is
13 true and correct.

14 EXECUTED at Seattle, Washington, this 9th day of June, 2005.

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KATHERINE HENDRICKS

HENDRICKS & LEWIS
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1 **TAXATION OF COSTS**

2 Costs are hereby taxed in the following amount and included in the judgment.

3 Amount Taxed: \$ _____

4 DATED this _____ day of June, 2005.

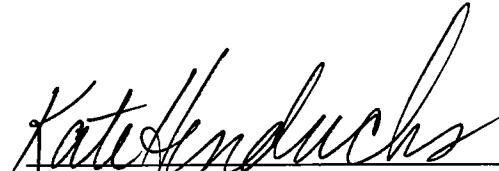
5 CLERK OF COURT

6
7
8 By: _____
9 Deputy Clerk
10 U.S. District Clerk
11 Western District of Washington

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2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on June _____, 2005 I electronically filed the foregoing with the
5 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
6 following CM/ECF participant, and I hereby certify that a copy hereof was served by U.S. Postal
7 Service Mail on the following:

8 Shannon L. McDougald
9 Perkins Coie, LLP
10 1201 Third Avenue, Suite 4800
11 Seattle, Washington 98101
12 Telephone: (206) 583-8888
13 Facsimile: (206) 583-8500
14 Email: SMcDougald@perkinscoie.com

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16 KATHERINE HENDRICKS
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